

1 A bill to be entitled  
2 An act relating to adult guardianship; designating ss.  
3 415.101-415.113, F.S., as pt. I of ch. 415, F.S.; creating  
4 pt. II of ch. 415, F.S., the "Uniform Adult Guardianship  
5 and Protective Proceedings Jurisdiction Act"; providing  
6 definitions; providing for international application of  
7 the part; authorizing communication and cooperation  
8 between courts; establishing procedures for taking  
9 testimony in another state; providing exclusive  
10 jurisdictional basis for a court in this state to appoint  
11 a guardian or issue a protective order for an adult;  
12 providing conditions under which a court has jurisdiction  
13 to appoint a guardian or issue a protective order for a  
14 respondent; providing conditions under which a court may  
15 exercise special or exclusive and continuing jurisdiction  
16 to appoint a guardian or issue a protective order;  
17 requiring a court to dismiss a petition for appointment of  
18 a guardian under certain circumstances; authorizing a  
19 court to decline to exercise its jurisdiction under  
20 certain circumstances; providing for determination of the  
21 appropriate forum for a proceeding to appoint a guardian  
22 or issue a protective order; requiring that certain  
23 factors be considered in making the determination;  
24 providing circumstances under which a court may decline to  
25 exercise jurisdiction; authorizing the court to assess  
26 specified fees, costs, and expenses under certain  
27 circumstances; requiring notice of proceedings to appoint  
28 a guardian or issue a protective order to comply with

29 | certain requirements; providing requirements for  
30 | proceedings conducted in more than one state; providing  
31 | conditions for transfer of guardianship or conservatorship  
32 | to another state; providing for the court to hold a  
33 | hearing on a petition for transfer; providing for the  
34 | court to issue a provisional order granting transfer;  
35 | requiring the court to issue a final order confirming  
36 | transfer upon receipt of specified documentation;  
37 | providing conditions for accepting guardianship or  
38 | conservatorship transferred from another state; requiring  
39 | the guardian or conservator to petition the court for  
40 | transfer and providing requirements therefor; providing  
41 | for the court to hold a hearing on a petition for  
42 | transfer; providing for the court to issue a provisional  
43 | order granting a petition for transfer; requiring the  
44 | court to issue a final order accepting the proceeding upon  
45 | receipt of specified documentation; providing a time limit  
46 | on modification of guardianship or conservatorship;  
47 | requiring the court to recognize guardianship and  
48 | conservatorship orders from other states; providing  
49 | circumstances under which appointment of a guardian or  
50 | conservator may continue; permitting a guardian appointed  
51 | in another state to register a guardianship order under  
52 | certain conditions; permitting a conservator appointed in  
53 | another state to register a protective order under certain  
54 | conditions; providing for effect of registration;  
55 | providing for uniformity of application and construction  
56 | of pt. II of ch. 415, F.S.; providing for applicability of

57 | the federal Electronic Signatures in Global and National  
 58 | Commerce Act; providing for applicability; amending ss.  
 59 | 39.509, 400.0067, 400.0069, 415.101, 415.102, 415.104,  
 60 | 415.1045, 415.106, 415.107, 415.1099, 415.111, 415.1111,  
 61 | 415.112, and 415.113, F.S.; conforming references to  
 62 | changes made by the act; providing an effective date.

63 |  
 64 | Be It Enacted by the Legislature of the State of Florida:

65 |  
 66 | Section 1. Chapter 415, Florida Statutes, is designated as  
 67 | part I of that chapter, and part II of that chapter, consisting  
 68 | of sections 415.201, 415.202, 415.203, 415.204, 415.205,  
 69 | 415.206, 415.207, 415.208, 415.209, 415.2095, 415.211, 415.212,  
 70 | 415.213, 415.214, 415.215, 415.216, 415.217, 415.218, 415.219,  
 71 | 415.221, 415.222, and 415.223, is created to read:

72 | PART II

73 | UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

74 | JURISDICTION ACT

75 | 415.201 Short title.--This part may be cited as the  
 76 | "Uniform Adult Guardianship and Protective Proceedings  
 77 | Jurisdiction Act."

78 | 415.202 Definitions.--As used in this part:

79 | (1) "Adult" means an individual who has attained 18 years  
 80 | of age.

81 | (2) "Conservator" means a person appointed by the court to  
 82 | administer the property of an adult.

83 | (3) "Emergency" means a circumstance that may result in  
 84 | substantial harm to a respondent's health, safety, or welfare

85 and for which the appointment of a guardian is necessary because  
86 no other person has authority or is willing to act on the  
87 respondent's behalf.

88 (4) "Guardian" means a person appointed by the court to  
89 make decisions regarding the person of an adult.

90 (5) "Guardianship order" means an order appointing a  
91 guardian.

92 (6) "Guardianship proceeding" means a judicial proceeding  
93 in which an order for the appointment of a guardian is sought or  
94 has been issued.

95 (7) "Home state" means the state in which the respondent  
96 was physically present, including any period of temporary  
97 absence, for at least 6 consecutive months immediately prior to  
98 the filing of a petition for a protective order or the  
99 appointment of a guardian or, if no guardian has been appointed,  
100 the state in which the respondent was physically present,  
101 including any period of temporary absence, for at least 6  
102 consecutive months ending within the 6 months prior to the  
103 filing of the petition.

104 (8) "Incapacitated person" means an adult for whom a  
105 guardian has been appointed.

106 (9) "Party" means the respondent, petitioner, guardian,  
107 conservator, or any other person allowed by the court to  
108 participate in a guardianship or protective proceeding.

109 (10) "Person," except when used as part of the term  
110 "incapacitated person" or "protected person," means an  
111 individual, corporation, business trust, estate, trust,  
112 partnership, limited liability company, association, joint

113 venture, or government; governmental subdivision, agency,  
 114 instrumentality, or public corporation; or any other legal or  
 115 commercial entity.

116 (11) "Protected person" means an adult for whom a  
 117 protective order has been issued.

118 (12) "Protective order" means an order appointing a  
 119 conservator or other order related to the management of an  
 120 adult's property.

121 (13) "Protective proceeding" means a judicial proceeding  
 122 in which a protective order is sought or has been issued.

123 (14) "Record" means information that is inscribed on a  
 124 tangible medium or that is stored in an electronic or other  
 125 medium and is retrievable in perceivable form.

126 (15) "Respondent" means an adult for whom a protective  
 127 order or the appointment of a guardian is sought.

128 (16) "Significant-connection state" means a state, other  
 129 than the home state, with which a respondent has a significant  
 130 connection other than mere physical presence and in which  
 131 substantial evidence concerning the respondent is available.

132 (17) "State" means a state of the United States, the  
 133 District of Columbia, Puerto Rico, the United States Virgin  
 134 Islands, a federally recognized Indian tribe, or any territory  
 135 or insular possession subject to the jurisdiction of the United  
 136 States.

137 415.203 International application of this part.--A court  
 138 of this state may treat a foreign country as if it were a state  
 139 for the purpose of applying this part.

140           415.204 Communication between courts.--A court of this  
 141 state may communicate with a court in another state concerning a  
 142 proceeding arising under this part. The court may allow the  
 143 parties to participate in the communication.

144           415.205 Cooperation between courts.--

145           (1) In a guardianship or protective proceeding in this  
 146 state, a court of this state may request the appropriate court  
 147 of another state to do any of the following:

148           (a) Hold an evidentiary hearing;

149           (b) Order a person in that state to produce evidence or  
 150 give testimony pursuant to procedures of that state;

151           (c) Order that an evaluation or assessment be made of the  
 152 respondent;

153           (d) Order any appropriate investigation of a person  
 154 involved in a proceeding;

155           (e) Forward to the court of this state a certified copy of  
 156 the transcript or other record of a hearing under paragraph (a)  
 157 or any other proceeding, any evidence otherwise produced under  
 158 paragraph (b), and any evaluation or assessment prepared in  
 159 compliance with an order under paragraph (c) or paragraph (d);

160           (f) Issue any order necessary to ensure the appearance in  
 161 the proceeding of a person whose presence is necessary for the  
 162 court to make a determination, including the respondent or the  
 163 incapacitated or protected person; or

164           (g) Issue an order authorizing the release of medical,  
 165 financial, criminal, or other relevant information in that  
 166 state, including protected health information as defined in 45  
 167 C.F.R. s. 164.504.

168        (2) If a court of another state in which a guardianship or  
 169 protective proceeding is pending requests assistance as provided  
 170 in subsection (1), a court of this state has jurisdiction for  
 171 the limited purpose of granting the request or making reasonable  
 172 efforts to comply with the request.

173        415.206 Taking testimony in another state.--

174        (1) In addition to other procedures that may be available,  
 175 in a guardianship or protective proceeding testimony of a  
 176 witness who is located in another state may be offered by  
 177 deposition or other means allowable in this state for testimony  
 178 taken in another state. The court on its own motion may order  
 179 that the testimony of a witness be taken in another state and  
 180 may prescribe the manner in which and the terms upon which the  
 181 testimony is to be taken.

182        (2) In a guardianship or protective proceeding, a court in  
 183 this state may permit a witness located in another state to be  
 184 deposed or to testify by telephone or audiovisual or other  
 185 electronic means. A court of this state shall cooperate with the  
 186 court of the other state in designating an appropriate location  
 187 for the deposition or testimony.

188        (3) Documentary evidence transmitted from another state to  
 189 a court of this state by technological means that do not produce  
 190 an original writing may not be excluded from evidence on an  
 191 objection based on the best evidence rule pursuant to s. 90.952.

192        415.207 Exclusive basis.--This part provides the exclusive  
 193 jurisdictional basis for a court of this state to appoint a  
 194 guardian or issue a protective order for an adult.

195        415.208 Jurisdiction.--

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196       (1) A court of this state has jurisdiction to appoint a  
197 guardian or issue a protective order for a respondent if:  
198       (a) This state is the respondent's home state;  
199       (b) On the date the petition is filed, this state is a  
200 significant-connection state and:  
201           1. The respondent does not have a home state or a court of  
202 the respondent's home state has declined to exercise  
203 jurisdiction because this state is a more appropriate forum; or  
204           2. The respondent has a home state, a petition for an  
205 appointment or order is not pending in a court of that state or  
206 another significant-connection state, and, before the court  
207 makes the appointment or issues the order:  
208           a. A petition for an appointment or order is not filed in  
209 the respondent's home state;  
210           b. An objection to the court's jurisdiction is not filed  
211 by a person required to be notified of the proceeding; and  
212           c. The court in this state concludes that it is an  
213 appropriate forum under s. 415.211;  
214       (c) This state does not have jurisdiction under paragraph  
215 (a) or paragraph (b), the respondent's home state and all  
216 significant-connection states have declined to exercise  
217 jurisdiction because this state is the more appropriate forum,  
218 and jurisdiction in this state is consistent with the State  
219 Constitution and the Constitution and laws of the United States;  
220 or  
221       (d) The requirements for special jurisdiction under s.  
222 415.209 are met.



223           (2) For purposes of determining under this section and s.  
 224 415.215(5) whether a respondent has a significant connection  
 225 with a particular state, the court shall consider:

226           (a) The location of the respondent's family and other  
 227 persons required to be notified of the guardianship or  
 228 protective proceeding;

229           (b) The length of time the respondent was physically  
 230 present at any time in the state and the duration of any  
 231 absence;

232           (c) The location of the respondent's property; and

233           (d) The extent to which the respondent has ties to the  
 234 state as evidenced by a voter registration record, filed state  
 235 or local tax returns, a vehicle registration certificate, a  
 236 driver's license, social relationships, or receipts for  
 237 services.

238           415.209 Special jurisdiction.--

239           (1) A court of this state lacking jurisdiction under s.  
 240 415.2095 has special jurisdiction to do any of the following:

241           (a) Appoint a guardian in an emergency for a term not  
 242 exceeding 90 days for a respondent who is physically present in  
 243 this state;

244           (b) Issue a protective order with respect to real or  
 245 tangible personal property located in this state; or

246           (c) Appoint a guardian or conservator for an incapacitated  
 247 or protected person for whom a provisional order to transfer the  
 248 proceeding from another state has been issued under procedures  
 249 similar to those provided in s. 415.215.

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250       (2) If a petition for the appointment of a guardian in an  
251 emergency is brought in this state and this state was not the  
252 respondent's home state on the date the petition was filed, the  
253 court shall dismiss the proceeding at the request of the court  
254 of the home state, if any, whether dismissal is requested before  
255 or after the emergency appointment.

256       415.2095 Exclusive and continuing jurisdiction.--Except as  
257 otherwise provided in s. 415.209, a court that has appointed a  
258 guardian or issued a protective order consistent with this part  
259 has exclusive and continuing jurisdiction over the proceeding  
260 until it is terminated by the court or the appointment or order  
261 expires by its own terms.

262       415.211 Appropriate forum.--

263       (1) A court of this state having jurisdiction under s.  
264 415.208 to appoint a guardian or issue a protective order may  
265 decline to exercise its jurisdiction if it determines at any  
266 time that a court of another state is a more appropriate forum.

267       (2) If a court of this state declines to exercise its  
268 jurisdiction under subsection (1), it shall either dismiss or  
269 stay the proceeding. The court may impose any condition the  
270 court considers just and proper, including the condition that a  
271 petition for the appointment of a guardian or issuance of a  
272 protective order be filed promptly in another state.

273       (3) In determining whether it is an appropriate forum, the  
274 court shall consider all relevant factors, including:

275       (a) Any expressed preference of the respondent.

276       (b) Whether abuse, neglect, or exploitation of the  
277 respondent has occurred or is likely to occur and which state

278 | could best protect the respondent from the abuse, neglect, or  
 279 | exploitation.

280 | (c) The length of time the respondent was physically  
 281 | present in or was a legal resident of this or another state.

282 | (d) The distance of the respondent from the court in each  
 283 | state.

284 | (e) The financial circumstances of the respondent's  
 285 | estate.

286 | (f) The nature and location of the evidence.

287 | (g) The ability of the court in each state to decide the  
 288 | issue expeditiously and the procedures necessary to present  
 289 | evidence.

290 | (h) The familiarity of the court of each state with the  
 291 | facts and issues in the proceeding.

292 | (i) If an appointment is made, the court's ability to  
 293 | monitor the conduct of the guardian or conservator.

294 | 415.212 Jurisdiction declined by reason of conduct.--

295 | (1) If at any time a court of this state determines that  
 296 | it acquired jurisdiction to appoint a guardian or issue a  
 297 | protective order because of unjustifiable conduct, the court  
 298 | may:

299 | (a) Decline to exercise jurisdiction;

300 | (b) Exercise jurisdiction for the limited purpose of  
 301 | fashioning an appropriate remedy to ensure the health, safety,  
 302 | and welfare of the respondent or the protection of the  
 303 | respondent's property or prevent a repetition of the  
 304 | unjustifiable conduct, including staying the proceeding until a  
 305 | petition for the appointment of a guardian or issuance of a

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306 protective order is filed in a court of another state having  
307 jurisdiction; or

308 (c) Continue to exercise jurisdiction after considering:

309 1. The extent to which the respondent and all persons  
310 required to be notified of the proceedings have acquiesced in  
311 the exercise of the court's jurisdiction;

312 2. Whether a court of this state is a more appropriate  
313 forum than the court of any other state pursuant to the factors  
314 set forth in s. 415.211(3); and

315 3. Whether the court of any other state would have  
316 jurisdiction under factual circumstances in substantial  
317 conformity with the jurisdictional standards of s. 415.208.

318 (2) If a court of this state determines that it acquired  
319 jurisdiction to appoint a guardian or issue a protective order  
320 because a party seeking to invoke its jurisdiction engaged in  
321 unjustifiable conduct, it may assess against that party  
322 necessary and reasonable expenses, including attorney's fees,  
323 investigative fees, court costs, communication expenses, witness  
324 fees and expenses, and travel expenses. The court may not assess  
325 fees, costs, or expenses of any kind against this state or a  
326 governmental subdivision, agency, or instrumentality of this  
327 state unless authorized by law other than this part.

328 415.213 Notice of proceeding.--If a petition for the  
329 appointment of a guardian or issuance of a protective order is  
330 brought in this state and this state was not the respondent's  
331 home state on the date the petition was filed, in addition to  
332 complying with the notice requirements of this state, notice of  
333 the petition must be given to those persons who would be

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334 entitled to notice of the petition if a proceeding were brought  
335 in the respondent's home state. The notice must be given in the  
336 same manner as notice is required to be given in this state.

337 415.214 Proceedings in more than one state.--Except for a  
338 petition for the appointment of a guardian in an emergency under  
339 s. 415.209(1) (a) or issuance of a protective order limited to  
340 property located in this state under s. 415.209(1) (b), if a  
341 petition for the appointment of a guardian or issuance of a  
342 protective order is filed in this state and in another state and  
343 neither petition has been dismissed or withdrawn, the following  
344 requirements apply:

345 (1) If the court in this state has jurisdiction under s.  
346 415.208, it may proceed with the case unless a court in another  
347 state acquires jurisdiction under provisions similar to s.  
348 415.208 before the appointment of the guardian or issuance of  
349 the order.

350 (2) If the court in this state does not have jurisdiction  
351 under s. 415.208, whether at the time the petition is filed or  
352 at any time before the appointment of the guardian or issuance  
353 of the order, the court shall stay the proceeding and  
354 communicate with the court in the other state. If the court in  
355 the other state has jurisdiction, the court in this state shall  
356 dismiss the petition unless the court in the other state  
357 determines that the court in this state is a more appropriate  
358 forum.

359 415.215 Transfer of guardianship or conservatorship to  
360 another state.--

361       (1) A guardian or conservator appointed in this state may  
362 petition the court to transfer the guardianship or  
363 conservatorship to another state.

364       (2) Notice of a petition under subsection (1) must be  
365 given to the persons who would be entitled to notice of a  
366 petition in this state for the appointment of a guardian or  
367 conservator.

368       (3) On the court's own motion or on request of the  
369 guardian or conservator, the incapacitated or protected person,  
370 or any other person required to be notified of the petition, the  
371 court shall hold a hearing on a petition filed pursuant to  
372 subsection (1).

373       (4) The court shall issue a provisional order granting a  
374 petition to transfer a guardianship and shall direct the  
375 guardian to petition for guardianship in the other state if the  
376 court is satisfied that the guardianship will be accepted by the  
377 court in the other state and the court finds that:

378       (a) The incapacitated person is physically present in or  
379 is reasonably expected to move permanently to the other state.

380       (b) An objection to the transfer has not been made or, if  
381 an objection has been made, the objector has not established  
382 that the transfer would be contrary to the interests of the  
383 incapacitated person.

384       (c) Plans for care and services for the incapacitated  
385 person in the other state are reasonable and sufficient.

386       (5) The court shall issue a provisional order granting a  
387 petition to transfer a conservatorship and shall direct the  
388 conservator to petition for conservatorship in the other state

389 if the court is satisfied that the conservatorship will be  
 390 accepted by the court of the other state and the court finds  
 391 that:

392 (a) The protected person is physically present in or is  
 393 reasonably expected to move permanently to the other state or  
 394 the protected person has a significant connection to the other  
 395 state pursuant to the factors set forth in s. 415.208(2).

396 (b) An objection to the transfer has not been made or, if  
 397 an objection has been made, the objector has not established  
 398 that the transfer would be contrary to the interests of the  
 399 protected person.

400 (c) Adequate arrangements will be made for management of  
 401 the protected person's property.

402 (6) The court shall issue a final order confirming the  
 403 transfer and terminating the guardianship or conservatorship  
 404 upon its receipt of both of the following:

405 (a) A provisional order accepting the proceeding from the  
 406 court to which the proceeding is to be transferred which is  
 407 issued under provisions similar to s. 415.216.

408 (b) The documents required to terminate a guardianship or  
 409 conservatorship in this state.

410 415.216 Accepting guardianship or conservatorship  
 411 transferred from another state.--

412 (1) To confirm transfer of a guardianship or  
 413 conservatorship transferred to this state under provisions  
 414 similar to s. 415.215, the guardian or conservator must petition  
 415 the court in this state to accept the guardianship or

416 conservatorship. The petition must include a certified copy of  
417 the other state's provisional order of transfer.

418 (2) Notice of a petition under subsection (1) must be  
419 given to those persons who would be entitled to notice if the  
420 petition were a petition for the appointment of a guardian or  
421 issuance of a protective order in both the transferring state  
422 and this state. The notice must be given in the same manner as  
423 notice is required to be given in this state.

424 (3) On the court's own motion or on request of the  
425 guardian or conservator, the incapacitated or protected person,  
426 or any other person required to be notified of the proceeding,  
427 the court shall hold a hearing on a petition filed pursuant to  
428 subsection (1).

429 (4) The court shall issue a provisional order granting a  
430 petition filed under subsection (1), unless:

431 (a) An objection is made and the objector establishes that  
432 transfer of the proceeding would be contrary to the interests of  
433 the incapacitated or protected person; or

434 (b) The guardian or conservator is ineligible for  
435 appointment in this state.

436 (5) The court shall issue a final order accepting the  
437 proceeding and appointing the guardian or conservator as  
438 guardian or conservator in this state upon its receipt from the  
439 court from which the proceeding is being transferred of a final  
440 order issued under provisions similar to s. 415.215 transferring  
441 the proceeding to this state.

442 (6) Not later than 90 days after issuance of a final order  
443 accepting transfer of a guardianship or conservatorship, the



444 court shall determine whether the guardianship or  
445 conservatorship needs to be modified to conform to the laws of  
446 this state.

447 (7) In granting a petition under this section, the court  
448 shall recognize a guardianship or conservatorship order from the  
449 other state, including the determination of the incapacitated or  
450 protected person's incapacity and the appointment of the  
451 guardian or conservator.

452 (8) The denial by a court of this state of a petition to  
453 accept a guardianship or conservatorship transferred from  
454 another state does not affect the ability of the guardian or  
455 conservator to seek appointment as a guardian or conservator in  
456 this state if the court has jurisdiction to make an appointment  
457 other than by reason of the provisional order of transfer.

458 415.217 Registration of guardianship orders.--If a  
459 guardian has been appointed in another state and a petition for  
460 the appointment of a guardian is not pending in this state, the  
461 guardian appointed in the other state, after giving notice to  
462 the appointing court of an intent to register, may register the  
463 guardianship order in this state by filing certified copies of  
464 the order and letters of office as a foreign judgment in a court  
465 in any appropriate county of this state.

466 415.218 Registration of protective orders.--If a  
467 conservator has been appointed in another state and a petition  
468 for a protective order is not pending in this state, the  
469 conservator appointed in the other state, after giving notice to  
470 the appointing court of an intent to register, may register the  
471 protective order in this state by filing certified copies of the

472 order, letters of office, and any bond as a foreign judgment in  
473 a court of this state in any county in which property belonging  
474 to the protected person is located.

475 415.219 Effect of registration.--

476 (1) Upon registration of a guardianship or protective  
477 order from another state, the guardian or conservator may  
478 exercise in this state all powers authorized in the order of  
479 appointment, except as prohibited under the laws of this state,  
480 including maintaining actions and proceedings in this state,  
481 subject to any conditions imposed upon nonresident parties if  
482 the guardian or conservator is not a resident of this state.

483 (2) A court of this state may grant any relief available  
484 under this part and other laws of this state to enforce a  
485 registered order.

486 415.221 Uniformity of application and construction.--In  
487 applying and construing this uniform act, consideration must be  
488 given to the need to promote uniformity of the law with respect  
489 to its subject matter among states that enact it.

490 415.222 Applicability of federal Electronic Signatures in  
491 Global and National Commerce Act.--This part modifies, limits,  
492 and supersedes the federal Electronic Signatures in Global and  
493 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not  
494 modify, limit, or supersede s. 101(c) of the act or authorize  
495 electronic delivery of the notices described in s. 103(b) of the  
496 act.

497 415.223 Applicability.--

498 (1) This part applies to guardianship and protective  
499 proceedings begun on or after July 1, 2009.

500           (2) Sections 415.201-415.206 and 415.215-415.222 apply to  
 501 proceedings begun before July 1, 2009, regardless of whether a  
 502 guardianship or protective order has been issued.

503           Section 2. Paragraph (c) of subsection (6) of section  
 504 39.509, Florida Statutes, is amended to read:

505           39.509 Grandparents rights.--Notwithstanding any other  
 506 provision of law, a maternal or paternal grandparent as well as  
 507 a stepgrandparent is entitled to reasonable visitation with his  
 508 or her grandchild who has been adjudicated a dependent child and  
 509 taken from the physical custody of the parent unless the court  
 510 finds that such visitation is not in the best interest of the  
 511 child or that such visitation would interfere with the goals of  
 512 the case plan. Reasonable visitation may be unsupervised and,  
 513 where appropriate and feasible, may be frequent and continuing.  
 514 Any order for visitation or other contact must conform to the  
 515 provisions of s. 39.0139.

516           (6) In determining whether grandparental visitation is not  
 517 in the child's best interest, consideration may be given to the  
 518 following:

519           (c) A report of abuse, abandonment, or neglect under ~~ss.~~  
 520 ~~415.101-415.113~~ or this chapter or part I of chapter 415 and the  
 521 outcome of the investigation concerning such report.

522           Section 3. Paragraph (c) of subsection (2) of section  
 523 400.0067, Florida Statutes, is amended to read:

524           400.0067 State Long-Term Care Ombudsman Council; duties;  
 525 membership.--

526           (2) The State Long-Term Care Ombudsman Council shall:

527 (c) Assist the ombudsman to discover, investigate, and  
 528 determine the existence of abuse or neglect in any long-term  
 529 care facility, and work with the adult protective services  
 530 program as required in part I of chapter 415 ~~ss. 415.101-~~  
 531 ~~415.113~~.

532 Section 4. Paragraph (b) of subsection (2) of section  
 533 400.0069, Florida Statutes, is amended to read:

534 400.0069 Local long-term care ombudsman councils; duties;  
 535 membership.--

536 (2) The duties of the local councils are to:

537 (b) Discover, investigate, and determine the existence of  
 538 abuse or neglect in any long-term care facility and to use the  
 539 procedures provided for in part I of chapter 415 ~~ss. 415.101-~~  
 540 ~~415.113~~ when applicable.

541 Section 5. Subsection (1) of section 415.101, Florida  
 542 Statutes, is amended to read:

543 415.101 Adult Protective Services Act; legislative  
 544 intent.--

545 (1) This part ~~Sections 415.101-415.113~~ may be cited as the  
 546 "Adult Protective Services Act."

547 Section 6. Section 415.102, Florida Statutes, is amended  
 548 to read:

549 415.102 ~~Definitions of terms used in ss. 415.101-~~  
 550 ~~415.113~~.--As used in this part ~~ss. 415.101-415.113~~, the term:

551 (1) "Abuse" means any willful act or threatened act by a  
 552 relative, caregiver, or household member which causes or is  
 553 likely to cause significant impairment to a vulnerable adult's

554 physical, mental, or emotional health. Abuse includes acts and  
555 omissions.

556 (2) "Alleged perpetrator" means a person who has been  
557 named by a reporter as the person responsible for abusing,  
558 neglecting, or exploiting a vulnerable adult.

559 (3) "Capacity to consent" means that a vulnerable adult  
560 has sufficient understanding to make and communicate responsible  
561 decisions regarding the vulnerable adult's person or property,  
562 including whether or not to accept protective services offered  
563 by the department.

564 (4) "Caregiver" means a person who has been entrusted with  
565 or has assumed the responsibility for frequent and regular care  
566 of or services to a vulnerable adult on a temporary or permanent  
567 basis and who has a commitment, agreement, or understanding with  
568 that person or that person's guardian that a caregiver role  
569 exists. "Caregiver" includes, but is not limited to, relatives,  
570 household members, guardians, neighbors, and employees and  
571 volunteers of facilities as defined in subsection (8). For the  
572 purpose of departmental investigative jurisdiction, the term  
573 "caregiver" does not include law enforcement officers or  
574 employees of municipal or county detention facilities or the  
575 Department of Corrections while acting in an official capacity.

576 (5) "Deception" means a misrepresentation or concealment  
577 of a material fact relating to services rendered, disposition of  
578 property, or the use of property intended to benefit a  
579 vulnerable adult.

580 (6) "Department" means the Department of Children and  
581 Family Services.

582           (7) (a) "Exploitation" means a person who:

583           1. Stands in a position of trust and confidence with a

584 vulnerable adult and knowingly, by deception or intimidation,

585 obtains or uses, or endeavors to obtain or use, a vulnerable

586 adult's funds, assets, or property with the intent to

587 temporarily or permanently deprive a vulnerable adult of the

588 use, benefit, or possession of the funds, assets, or property

589 for the benefit of someone other than the vulnerable adult; or

590           2. Knows or should know that the vulnerable adult lacks

591 the capacity to consent, and obtains or uses, or endeavors to

592 obtain or use, the vulnerable adult's funds, assets, or property

593 with the intent to temporarily or permanently deprive the

594 vulnerable adult of the use, benefit, or possession of the

595 funds, assets, or property for the benefit of someone other than

596 the vulnerable adult.

597           (b) "Exploitation" may include, but is not limited to:

598           1. Breaches of fiduciary relationships, such as the misuse

599 of a power of attorney or the abuse of guardianship duties,

600 resulting in the unauthorized appropriation, sale, or transfer

601 of property;

602           2. Unauthorized taking of personal assets;

603           3. Misappropriation, misuse, or transfer of moneys

604 belonging to a vulnerable adult from a personal or joint

605 account; or

606           4. Intentional or negligent failure to effectively use a

607 vulnerable adult's income and assets for the necessities

608 required for that person's support and maintenance.

609 (8) "Facility" means any location providing day or  
610 residential care or treatment for vulnerable adults. The term  
611 "facility" may include, but is not limited to, any hospital,  
612 state institution, nursing home, assisted living facility, adult  
613 family-care home, adult day care center, residential facility  
614 licensed under chapter 393, adult day training center, or mental  
615 health treatment center.

616 (9) "False report" means a report of abuse, neglect, or  
617 exploitation of a vulnerable adult to the central abuse hotline  
618 which is not true and is maliciously made for the purpose of:

619 (a) Harassing, embarrassing, or harming another person;

620 (b) Personal financial gain for the reporting person;

621 (c) Acquiring custody of a vulnerable adult; or

622 (d) Personal benefit for the reporting person in any other  
623 private dispute involving a vulnerable adult.

624

625 The term "false report" does not include a report of abuse,  
626 neglect, or exploitation of a vulnerable adult which is made in  
627 good faith to the central abuse hotline.

628 (10) "Fiduciary relationship" means a relationship based  
629 upon the trust and confidence of the vulnerable adult in the  
630 caregiver, relative, household member, or other person entrusted  
631 with the use or management of the property or assets of the  
632 vulnerable adult. The relationship exists where there is a  
633 special confidence reposed in one who in equity and good  
634 conscience is bound to act in good faith and with due regard to  
635 the interests of the vulnerable adult. For the purposes of this  
636 part, a fiduciary relationship may be formed by an informal

637 agreement between the vulnerable adult and the other person and  
638 does not require a formal declaration or court order for its  
639 existence. A fiduciary relationship includes, but is not limited  
640 to, court-appointed or voluntary guardians, trustees, attorneys,  
641 or conservators of a vulnerable adult's assets or property.

642 (11) "Guardian" means a person who has been appointed by a  
643 court to act on behalf of a person; a preneed guardian, as  
644 provided in chapter 744; or a health care surrogate expressly  
645 designated as provided in chapter 765.

646 (12) "In-home services" means the provision of nursing,  
647 personal care, supervision, or other services to vulnerable  
648 adults in their own homes.

649 (13) "Intimidation" means the communication by word or act  
650 to a vulnerable adult that that person will be deprived of food,  
651 nutrition, clothing, shelter, supervision, medicine, medical  
652 services, money, or financial support or will suffer physical  
653 violence.

654 (14) "Lacks capacity to consent" means a mental impairment  
655 that causes a vulnerable adult to lack sufficient understanding  
656 or capacity to make or communicate responsible decisions  
657 concerning person or property, including whether or not to  
658 accept protective services.

659 (15) "Neglect" means the failure or omission on the part  
660 of the caregiver or vulnerable adult to provide the care,  
661 supervision, and services necessary to maintain the physical and  
662 mental health of the vulnerable adult, including, but not  
663 limited to, food, clothing, medicine, shelter, supervision, and  
664 medical services, which a prudent person would consider



665 essential for the well-being of a vulnerable adult. The term  
 666 "neglect" also means the failure of a caregiver or vulnerable  
 667 adult to make a reasonable effort to protect a vulnerable adult  
 668 from abuse, neglect, or exploitation by others. "Neglect" is  
 669 repeated conduct or a single incident of carelessness which  
 670 produces or could reasonably be expected to result in serious  
 671 physical or psychological injury or a substantial risk of death.

672 (16) "Obtains or uses" means any manner of:

673 (a) Taking or exercising control over property;

674 (b) Making any use, disposition, or transfer of property;

675 (c) Obtaining property by fraud, willful misrepresentation  
 676 of a future act, or false promise; or

677 (d)1. Conduct otherwise known as stealing; larceny;  
 678 purloining; abstracting; embezzlement; misapplication;  
 679 misappropriation; conversion; or obtaining money or property by  
 680 false pretenses, fraud, or deception; or

681 2. Other conduct similar in nature.

682 (17) "Position of trust and confidence" with respect to a  
 683 vulnerable adult means the position of a person who:

684 (a) Is a parent, spouse, adult child, or other relative by  
 685 blood or marriage;

686 (b) Is a joint tenant or tenant in common;

687 (c) Has a legal or fiduciary relationship, including, but  
 688 not limited to, a court-appointed or voluntary guardian,  
 689 trustee, attorney, or conservator; or

690 (d) Is a caregiver or any other person who has been  
 691 entrusted with or has assumed responsibility for the use or  
 692 management of the vulnerable adult's funds, assets, or property.

693 (18) "Protective investigation" means acceptance of a  
694 report from the central abuse hotline alleging abuse, neglect,  
695 or exploitation as defined in this section; investigation of the  
696 report; determination as to whether action by the court is  
697 warranted; and referral of the vulnerable adult to another  
698 public or private agency when appropriate.

699 (19) "Protective investigator" means an authorized agent  
700 of the department who receives and investigates reports of  
701 abuse, neglect, or exploitation of vulnerable adults.

702 (20) "Protective services" means services to protect a  
703 vulnerable adult from further occurrences of abuse, neglect, or  
704 exploitation. Such services may include, but are not limited to,  
705 protective supervision, placement, and in-home and community-  
706 based services.

707 (21) "Protective supervision" means those services  
708 arranged for or implemented by the department to protect  
709 vulnerable adults from further occurrences of abuse, neglect, or  
710 exploitation.

711 (22) "Psychological injury" means an injury to the  
712 intellectual functioning or emotional state of a vulnerable  
713 adult as evidenced by an observable or measurable reduction in  
714 the vulnerable adult's ability to function within that person's  
715 customary range of performance and that person's behavior.

716 (23) "Records" means all documents, papers, letters, maps,  
717 books, tapes, photographs, films, sound recordings, videotapes,  
718 or other material, regardless of physical form or  
719 characteristics, made or received pursuant to a protective  
720 investigation.

721 (24) "Sexual abuse" means acts of a sexual nature  
 722 committed in the presence of a vulnerable adult without that  
 723 person's informed consent. "Sexual abuse" includes, but is not  
 724 limited to, the acts defined in s. 794.011(1)(h), fondling,  
 725 exposure of a vulnerable adult's sexual organs, or the use of a  
 726 vulnerable adult to solicit for or engage in prostitution or  
 727 sexual performance. "Sexual abuse" does not include any act  
 728 intended for a valid medical purpose or any act that may  
 729 reasonably be construed to be normal caregiving action or  
 730 appropriate display of affection.

731 (25) "Victim" means any vulnerable adult named in a report  
 732 of abuse, neglect, or exploitation.

733 (26) "Vulnerable adult" means a person 18 years of age or  
 734 older whose ability to perform the normal activities of daily  
 735 living or to provide for his or her own care or protection is  
 736 impaired due to a mental, emotional, long-term physical, or  
 737 developmental disability or dysfunctioning, or brain damage, or  
 738 the infirmities of aging.

739 (27) "Vulnerable adult in need of services" means a  
 740 vulnerable adult who has been determined by a protective  
 741 investigator to be suffering from the ill effects of neglect not  
 742 caused by a second party perpetrator and is in need of  
 743 protective services or other services to prevent further harm.

744 Section 7. Subsection (2) of section 415.104, Florida  
 745 Statutes, is amended to read:

746 415.104 Protective investigations of cases of abuse,  
 747 neglect, or exploitation of vulnerable adults; transmittal of  
 748 records to state attorney.--

749 (2) Upon commencing an investigation, the protective  
750 investigator shall inform all of the vulnerable adults and  
751 alleged perpetrators named in the report of the following:

752 (a) The names of the investigators and identifying  
753 credentials from the department.

754 (b) The purpose of the investigation.

755 (c) That the victim, the victim's guardian, the victim's  
756 caregiver, and the alleged perpetrator, and legal counsel for  
757 any of those persons, have a right to a copy of the report at  
758 the conclusion of the investigation.

759 (d) The name and telephone number of the protective  
760 investigator's supervisor available to answer questions.

761 (e) That each person has the right to obtain his or her  
762 own attorney.

763

764 Any person being interviewed by a protective investigator may be  
765 represented by an attorney, at the person's own expense, or may  
766 choose to have another person present. The other person present  
767 may not be an alleged perpetrator in any report currently under  
768 investigation. Before participating in such interview, the other  
769 person present shall execute an agreement to comply with the  
770 confidentiality requirements of this part ~~ss. 415.101-415.113~~.

771 The absence of an attorney or other person does not prevent the  
772 department from proceeding with other aspects of the  
773 investigation, including interviews with other persons. In an  
774 investigative interview with a vulnerable adult, the protective  
775 investigator may conduct the interview with no other person  
776 present.

777 Section 8. Subsection (3), paragraph (b) of subsection  
 778 (4), and subsection (6) of section 415.1045, Florida Statutes,  
 779 are amended to read:

780 415.1045 Photographs, videotapes, and medical  
 781 examinations; abrogation of privileged communications;  
 782 confidential records and documents.--

783 (3) ABROGATION OF PRIVILEGED COMMUNICATIONS.--The  
 784 privileged quality of communication between husband and wife and  
 785 between any professional and the professional's patient or  
 786 client, and any other privileged communication except that  
 787 between attorney and client or clergy and person, as such  
 788 communication relates to both the competency of the witness and  
 789 to the exclusion of confidential communications, does not apply  
 790 to any situation involving known or suspected abuse, neglect, or  
 791 exploitation of a vulnerable adult and does not constitute  
 792 grounds for failure to report as required by s. 415.1034, for  
 793 failure to cooperate with law enforcement or the department in  
 794 its activities under this part ~~ss. 415.101-415.113~~, or for  
 795 failure to give evidence in any judicial or administrative  
 796 proceeding relating to abuse, neglect, or exploitation of a  
 797 vulnerable adult.

798 (4) MEDICAL, SOCIAL, OR FINANCIAL RECORDS OR DOCUMENTS.--

799 (b) The confidentiality of any medical, social, or  
 800 financial record or document that is confidential under state  
 801 law does not constitute grounds for failure to:

- 802 1. Report as required by s. 415.1034;
- 803 2. Cooperate with the department in its activities under
- 804 this part ~~ss. 415.101-415.113~~;

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805 3. Give access to such records or documents; or  
806 4. Give evidence in any judicial or administrative  
807 proceeding relating to abuse, neglect, or exploitation of a  
808 vulnerable adult.

809 (6) WORKING AGREEMENTS.--By March 1, 2004, the department  
810 shall enter into working agreements with the jurisdictionally  
811 responsible county sheriffs' office or local police department  
812 that will be the lead agency when conducting any criminal  
813 investigation arising from an allegation of abuse, neglect, or  
814 exploitation of a vulnerable adult. The working agreement must  
815 specify how the requirements of this part ~~chapter~~ will be met.  
816 The Office of Program Policy Analysis and Government  
817 Accountability shall conduct a review of the efficacy of the  
818 agreements and report its findings to the Legislature by March  
819 1, 2005. For the purposes of such agreement, the  
820 jurisdictionally responsible law enforcement entity is  
821 authorized to share Florida criminal history and local criminal  
822 history information that is not otherwise exempt from s.  
823 119.07(1) with the district personnel. A law enforcement entity  
824 entering into such agreement must comply with s. 943.0525.  
825 Criminal justice information provided by such law enforcement  
826 entity shall be used only for the purposes specified in the  
827 agreement and shall be provided at no charge. Notwithstanding  
828 any other provision of law, the Department of Law Enforcement  
829 shall provide to the department electronic access to Florida  
830 criminal justice information which is lawfully available and not  
831 exempt from s. 119.07(1), only for the purpose of protective  
832 investigations and emergency placement. As a condition of access

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833 to such information, the department shall be required to execute  
834 an appropriate user agreement addressing the access, use,  
835 dissemination, and destruction of such information and to comply  
836 with all applicable laws and rules of the Department of Law  
837 Enforcement.

838 Section 9. Subsection (1) of section 415.106, Florida  
839 Statutes, is amended to read:

840 415.106 Cooperation by the department and criminal justice  
841 and other agencies.--

842 (1) All criminal justice agencies have a duty and  
843 responsibility to cooperate fully with the department so as to  
844 enable the department to fulfill its responsibilities under this  
845 part ss. 415.101-415.113. Such duties include, but are not  
846 limited to, forced entry, emergency removal, emergency  
847 transportation, and the enforcement of court orders obtained  
848 under this part ss. 415.101-415.113.

849 Section 10. Subsection (1) of section 415.107, Florida  
850 Statutes, is amended to read:

851 415.107 Confidentiality of reports and records.--

852 (1) In order to protect the rights of the individual or  
853 other persons responsible for the welfare of a vulnerable adult,  
854 all records concerning reports of abuse, neglect, or  
855 exploitation of the vulnerable adult, including reports made to  
856 the central abuse hotline, and all records generated as a result  
857 of such reports shall be confidential and exempt from s.  
858 119.07(1) and may not be disclosed except as specifically  
859 authorized by this part ss. 415.101-415.113.

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860 Section 11. Section 415.1099, Florida Statutes, is amended  
861 to read:

862 415.1099 Court and witness fees not allowed.--In all  
863 proceedings under this part ~~ss. 415.101-415.113~~, court fees must  
864 not be charged to the department; to any party to a petition; to  
865 any legal custodian of records, documents, or persons; or to any  
866 adult named in a summons. In a proceeding under this part ~~ss.~~  
867 ~~415.101-415.113~~, witness fees are not allowed to the department;  
868 to any party to a petition; to any legal custodian of records,  
869 documents, or persons; or to any adult named in a summons.

870 Section 12. Subsection (2) of section 415.111, Florida  
871 Statutes, is amended to read:

872 415.111 Criminal penalties.--

873 (2) A person who knowingly and willfully makes public or  
874 discloses any confidential information contained in the central  
875 abuse hotline, or in other computer systems, or in the records  
876 of any case of abuse, neglect, or exploitation of a vulnerable  
877 adult, except as provided in this part ~~ss. 415.101-415.113~~,  
878 commits a misdemeanor of the second degree, punishable as  
879 provided in s. 775.082 or s. 775.083.

880 Section 13. Section 415.1111, Florida Statutes, is amended  
881 to read:

882 415.1111 Civil actions.--A vulnerable adult who has been  
883 abused, neglected, or exploited as specified in this part  
884 ~~chapter~~ has a cause of action against any perpetrator and may  
885 recover actual and punitive damages for such abuse, neglect, or  
886 exploitation. The action may be brought by the vulnerable adult,  
887 or that person's guardian, by a person or organization acting on



888 | behalf of the vulnerable adult with the consent of that person  
 889 | or that person's guardian, or by the personal representative of  
 890 | the estate of a deceased victim without regard to whether the  
 891 | cause of death resulted from the abuse, neglect, or  
 892 | exploitation. The action may be brought in any court of  
 893 | competent jurisdiction to enforce such action and to recover  
 894 | actual and punitive damages for any deprivation of or  
 895 | infringement on the rights of a vulnerable adult. A party who  
 896 | prevails in any such action may be entitled to recover  
 897 | reasonable attorney's fees, costs of the action, and damages.  
 898 | The remedies provided in this section are in addition to and  
 899 | cumulative with other legal and administrative remedies  
 900 | available to a vulnerable adult. Notwithstanding the foregoing,  
 901 | any civil action for damages against any licensee or entity who  
 902 | establishes, controls, conducts, manages, or operates a facility  
 903 | licensed under part II of chapter 400 relating to its operation  
 904 | of the licensed facility shall be brought pursuant to s.  
 905 | 400.023, or against any licensee or entity who establishes,  
 906 | controls, conducts, manages, or operates a facility licensed  
 907 | under part I of chapter 429 relating to its operation of the  
 908 | licensed facility shall be brought pursuant to s. 429.29. Such  
 909 | licensee or entity shall not be vicariously liable for the acts  
 910 | or omissions of its employees or agents or any other third party  
 911 | in an action brought under this section.

912 |       Section 14. Section 415.112, Florida Statutes, is amended  
 913 | to read:

914 |       415.112 ~~Rules for implementation of ss. 415.101-~~  
 915 | ~~415.113.~~--The department may adopt ~~shall promulgate~~ rules

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916 pursuant to ss. 120.536(1) and 120.54 to implement provisions of  
 917 this part conferring duties upon it ~~for the implementation of~~  
 918 ~~ss. 415.101-415.113.~~

919 Section 15. Section 415.113, Florida Statutes, is amended  
 920 to read:

921 415.113 Statutory construction; treatment by spiritual  
 922 means.--This part may not ~~Nothing in ss. 415.101-415.112 shall~~  
 923 be construed to mean a person is abused, neglected, or in need  
 924 of emergency or protective services for the sole reason that the  
 925 person relies upon and is, therefore, being furnished treatment  
 926 by spiritual means through prayer alone in accordance with the  
 927 tenets and practices of a well-recognized church or religious  
 928 denomination or organization; nor may this part ~~shall anything~~  
 929 ~~in such sections~~ be construed to authorize, permit, or require  
 930 any medical care or treatment in contravention of the stated or  
 931 implied objection of such person. Such construction does not:

932 (1) Eliminate the requirement that such a case be reported  
 933 to the department;

934 (2) Prevent the department from investigating such a case;  
 935 or

936 (3) Preclude a court from ordering, when the health of the  
 937 individual requires it, the provision of medical services by a  
 938 licensed physician or treatment by a duly accredited  
 939 practitioner who relies solely on spiritual means for healing in  
 940 accordance with the tenets and practices of a well-recognized  
 941 church or religious denomination or organization.

942 Section 16. This act shall take effect July 1, 2009.